APPENDIX A

THE SUPREME COURT
OF THE STATE OF LOUISIANA

No. 93-CC-0723

JOHN COSEY

VS.

DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT ET AL.

IN RE: Transportation & Dev. Dept. of;—Defendant(s); Applying for Supervisory and/or Remedial Writs; to the Court of Appeal, Fourth Circuit, Number 92CW-2619; Parish of Orleans Civil District Court Div. "I" Number 92-5913

April 30, 1993

Denied.

PH
PFC
WFM
JLD
JCW
HTL
CDK

ORTIQUE, J., not on panel.

Supreme Court of Louisiana
April 30, 1993

/s/ Frans J. Labranche, Jr.
Clerk of Court
For the Court

APPENDIX B

No. 92-C-2619

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

JOHN COSEY

versus

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT *et al.*

In Re:	DOTD
Applying for:	Supervisory Writs
Directed to:	Civil District Court for the Parish of Orleans, Honorable Bernette J. Johnson, Judge, Division "T," C.C.C. #92-05913

Writs were granted to review a trial court judgment denying the Department of Transportation and Development's exception of no cause of action. After response and memorandum, we now affirm the trial court judgment. The issue presented is whether a state employee, injured in the course and scope of his employment on a state-owned ferry, may seek redress in state court for his injuries under general maritime law and the Jones Act.

Respondent, John Cosey, was employed by the State as an oiler aboard the M/V FRANK X. ARMINGER, a DOTD ferry used to transport people and vehicles across the Mississippi River. As the ferry was docking, Respondent "lost his balance and injured his back while attempting to regain his balance." Respondent sued the DOTD, the vessel and the captain of the vessel in state

court under general maritime and Jones Act theories of recovery.[1]

The State opposed Cosey's state court action by an exception of no cause of action, maintaining "that it is immune from suits in admiralty by virtue of its status as a department of the State of Louisiana and the provisions of the Eleventh Amendment to the United States Constitution." Additionally, DOTD maintains Cosey is relegated to the provisions of the state workers compensation statutes to satisfy his injury claims.

The State confuses remedies under the law with the forum in which those remedies may be brought.

The Eleventh Amendment provides:

> The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The amendment has been judicially interpreted to bar a citizen from suing his own state in federal court, even though the express terms of the amendment refer only to suit by citizens of another state. *Hans v. Louisiana*, 134 U.S. 1, 33 L.Ed 842, 10 S.Ct. 504 (1890). Although the amendment bars a state from being hauled into federal court on a cause of action, it places no restrictions on the remedies which a citizen may urge against the state. While the State is immune from *suit* in federal court, this immunity does not encompass an immunity

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[1] Cosey actually filed three suits: one in the U.S. District Court under general maritime law and the Jones Act, naming as defendants, the State, the vessel and the vessel captain. The District Court dismissed the suit on a finding that the state had not waived its immunity to suit under the Eleventh Amendment to the U.S. Constitution; the second, is the suit in state court; and the third, a claim for workers' compensation benefits with the Office of Workers Compensation, which is pending.

from a cause of action in Admiralty under maritime law, the savings to suitors clause, or the Jones Act. The Eleventh amendment to the U.S. Constitution does not give DOTD immunity from admiralty claims in state court.

In maritime law and under the Jones Act, an employee can bring suit against his employer, and an employee may pursue that right in state courts under the savings to suitors clause. When an employee sues in state courts, he does not lose the right to sue his employer under maritime law. The only difference here is that the employer is a state agency.

The DOTD misconstrues Section 10(A) of Article 12 of the Louisiana Constitution which says:

> § 10. Suits Against the State
>
> Section 10. (A) No immunity in Contract and Tort.
>
> Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.

This provision does not support DOTD's argument. Rather it supports Cosey's claim which, while under maritime law, is one for injury to his person. If DOTD is not immune from suit, there is no reason to believe Cosey cannot bring a Jones Act claim against his employer, DOTD.

As for DOTD's assertion that Cosey is restricted to workers' compensation benefits, the Louisiana Legislature did not grant Cosey the cause of action he pursues. Rather, federal law provides him the remedies he seeks. The state may dictate the court in which he is entitled to litigate his claims, but it cannot limit the remedies afforded him by federal law under the savings to suitors clause.

Moreover, La. R.S. 23:1035.2 provides:

> No compensation shall be payable in respect to the disability or death of any employee covered by the

> Federal Employer's Liability Act, the Longshoremen's and Harbor Worker's Compensation Act, or any of its extensions, or the Jones Act.

Thus, Louisiana Workers Compensation and the Jones Act remedies are mutually exclusive, which lends support to Cosey's argument that he can bring a Jones Act claim against his employer in a state court.

Finally, if Cosey is "covered" by the Jones Act, within the meaning of 23:1035.2 above, but denied the right to proceed in federal court by the Eleventh Amendment, and unable to claim Jones Act remedies in state court because of sovereign immunity, then Cosey has neither a remedy nor a forum in which to pursue a remedy. Clearly, this is not the intent of the law.

We find no error in the lower court's ruling on DOTD's exception.

New Orleans, Louisiana this 17th day of February, 1993.

/s/ Charles R. Ward
JUDGE CHARLES R. WARD

/s/ Dennis A. Barry
JUDGE DENNIS A. BARRY

/s/ Charles R. Jones
JUDGE CHARLES R. JONES

APPENDIX C

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

No. 92-5913
DIVISION "I"

JOHN COSEY

versus

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
M/V FRANK X. ARMIGER, CAPTAIN HENRY BUSSEY,
AND ABC INSURANCE COMPANY

JUDGMENT

This cause came on for hearing on October 23, 1992, upon a peremptory exception of no cause of action, defendant to strike attorney fees.

Present: Stephen J. Caire, Esq. Attorney for Defendants,
Mover E. Howard McCaleb III, Attorney for
Plaintiff, Respondent

And, thereupon, the mover having filed a peremptory exception of no cause of action, and the exception having been argued and submitted; the Court considering that the exception is not well founded, for the reasons orally assigned:

IT IS ORDERED that the exception of no cause of action be, and it is, overruled and dismissed, defendants to answer the pleadings within ten days.

New Orleans, Louisiana, this 23rd day of October, 1992.

/s/ Hon. Bernette J. Johnson
Judge

APPENDIX D

CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

Number: 92-05913 "I"

JOHN COSEY

versus

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, M/V FRANK X. ARMIGER, CAPTAIN HENRY BUSSEY, AND ABC INSURANCE COMPANY

EXCEPTION OF NO CAUSE OF ACTION

NOW INTO COURT, through undersigned counsel, comes defendants, the Louisiana Department of Transportation and Development, M/V Frank X. Armiger, and Captain Henry Bussey, who, through their undersigned counsel, hereby except to the petition of the plaintiff on the grounds that it fails to state a cause of action for which redress would be possible.

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General

By: _____

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APPENDIX E

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

No. 92-5913 "I"

JOHN COSEY

versus

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, M/V FRANK X. ARMIGER, CAPTAIN HENRY BUSSEY, AND ABC INSURANCE COMPANY

ADMIRALTY AND MARITIME CLAIM

SEAMAN'S SUIT

COMPLAINT

COUNT I

Plaintiff, John Cosey, domiciled in the Parish of Saint Charles, is a seaman under the special rules allowing seaman to file suit without prepayment of costs and fees, under the general maritime law for unseaworthiness, and under the congressionally created Jones Act, respectfully represents:

1. Defendant, Department of Transportation and Development (DOTD), is a body corporate with the power to sue and be sued, domiciled in Baton Rouge, while the defendant, M/V Frank X. Armiger, is a ferry boat owned and operated by the DOTD, located in its Crescent City Connection Division, and under the DOTD's advisory agency, the Mississippi River Bridge Authority. Defendant, Captain Henry Bussey, is domiciled in this parish, while defendant, ABC Insurance Company, is a foreign Insurance company.

2. At all times material times, plaintiff was employed as a member of the crew of M/V Frank X. Armiger, in the position of Marine Oiler.

3. Defendant, DOTD, was under a duty to maintain the M/V Frank X. Armiger and its appurtenances in a safe and seaworthy condition. At all times material times, there was in force an Act of Congress known as the Merchant Marine Act commonly known as the Jones Act, and due to plaintiff's employment aboard the said vessel, he is entitled to maintain this action against DOTD under the provisions of the Act.

4. On May 14, 1991, plaintiff suffered injuries to his person in the course of his employment abroad the vessel. The occurrence was due to DOTD's failure to maintain the vessel and is appurtenances in a seaworthy condition, causing the rudder to jam on the day of the accident, and failing to provide plaintiff with a safe place to work by reason of DOTD's master negligently continuing to operate the vessel with the defective steering apparatus, making a hard landing, striking the pier with such force and violence that plaintiff lost his balance and injured his back trying to regain it.

5. As a result of the accident, plaintiff sustained severe pain, permanent injuries, is incapacitated from performing his duties as Marine Oiler, suffered loss earnings, mental distress, and has incurred obligations for medical services, which will continue into the future.

6. Defendant, Captain Henry Bussey, is a Marine Master 2, who at the time of the accident had the con of the vessel and negligently rammed it into the pier as aforesaid, resulting in the injuries to plaintiff.

7. At all material times, DOTD had a liability insurance policy with ABC Insurance Co. which covered DOTD for its negligent acts and those of its employees.

8. Plaintiff seeks an award of prejudgment interest from the date of the accident, and demands a jury under the Jones Act.

COUNT II

9. Defendant, DOTD, was and still is the owner of the aforesaid vessel, which at the time of the accident herein

could be found and can still be found within the Port of New Orleans, within the territorial jurisdiction of the United States and this court. Plaintiff was employed aboard her on May 14, 1991, on navigable waters of the United States.

10. At the time of the accident, plaintiff was going about his duties as a seaman by assisting—in mooring the vessel. He was standing at the Oiler's work station on the bow of the ferry boat.

11. The accident and resulting injury was caused by the unseaworthiness of M V Frank X. Armiger in that the gear and appurtenances of the vessel were unsafe and unfit for the purpose intended.

12. That prior to his injury plaintiff was a strong abled bodied seaman gainfully employed as such and capable of earning in excess of $250 per week. As a result of his injury, plaintiff is disable, unable to do any work of a seaman, continues to suffer physical and mental agony, and is unable to support either himself or his family.

COUNT III

12. Plaintiff is a seaman under the special rules allowing seamen to file suit without prepayment of costs and fees, or giving security therefore for maintenance, damages for failure to pay maintenance an cure, and for attorney fees.

13. Defendant, DOTD, has the duty to provide plaintiff with maintenance and cure during the period of his disability. Plaintiff is entitled to recover from DOTD the money he has expended for cure in the past, present and future.

14. In the event DOTD's failure or refusal to pay his maintenance and cure is found to be arbitrary or unjustified, plaintiff reserves his rights to seek damages and attorney fees therefor.

WHEREFORE, plaintiff prays:

I. That he be permitted to litigate this action without payment of cost in advance or as they accrue, or furnishing security therefor;

II. For trial by jury;

III. For judgment under the general maritime law and the Jones Act against the defendants, Department of Transportation and Development and ABC Insurance Company, in solido, for such damages as are reasonable in the premises, prejudgment interest from date of the accident, and costs;

IV. For judgment against the defendants, Department of Transportation and Development and ABC Insurance Company, in solido, for maintenance and cure.

V. For judgment against defendant, Captain Henry Bussey, for such damages as are reasonable in the premises, judicial interest from date of demand and costs.

/s/ E. Howard McCaleb III
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